

## REMARKS

Reconsideration of the above-identified application is respectfully requested. Claims 1, 4, 6, and 23 have been amended, Claims 20-22 canceled, and Claim 24 added by way of this amendment. Thus, Claims 1-19, 23, and 24 are currently pending in this application.

Claims 4-6 were rejected in an Office Action dated August 1, 2002 (hereinafter "the Office Action"), under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 4 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,332,709, issued to Kowalski (hereinafter "Kowalski"). Claims 1, 3, and 4 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,595,705, issued to Rosecrans, Sr. (hereinafter "Rosecrans"). Claims 5 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kowalski in view of U.S. Patent No. 932,805, issued to McLaughlin (hereinafter "McLaughlin"). Claims 7 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kowalski in view of U.S. Patent No. 5,724,478, issued to Thweatt (hereinafter "Thweatt"). Claims 8 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kowalski in view of U.S. Patent No. 2,297,966, issued to Luff (hereinafter "Luff").

Applicant thanks Examiner for acknowledging the patentability of Claims 10-19. Further, applicant thanks Examiner for acknowledging the allowability of Claim 2 if rewritten in independent form including all the limitations of the base claim and any intervening claims. Applicant has amended the claims to overcome the 35 U.S.C. § 112, second paragraph, rejections.

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### Claim Rejections Under 35 U.S.C. § 112

Claims 4-6 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant thanks Examiner for the careful review and helpful comments regarding the objected to claim language. The objected to language has been corrected. In view of the claim amendments, applicant respectfully submits that the rejections under 35 U.S.C. § 112, second paragraph, have been overcome.

### Claim Rejections Under 35 U.S.C. § 102(b) - Kowalski

Claim 1, as well as certain claims stemming therefrom, stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kowalski. Amended Claim 1 recites "a pipe section having a center segment integrally formed with inlet and outlet end portions of the pipe section." Applicant respectfully submits that these elements are not taught or suggested by Kowalski. In contrast to Claim 1, Kowalski teaches a pipe section having a center segment 10 wherein the center segment 10 and inlet and outlet end portions 18 and 20 are not integrally formed. Moreover, the inlet and outlet end portions 18 and 20 of Kowalski are integrally formed with the tubing, and not the center segment 10. Referring to FIGURE 2 of Kowalski, it is apparent that the inlet and outlet portions 18 and 20 are separate entities from the center segment 10 and do not engage the center segment 10, since a sealing element 70 is disposed between the center segment 10 and the inlet and outlet end portions 18 and 20. Therefore, Kowalski fails to teach or suggest "a pipe section having a center segment integrally formed with inlet and outlet end portions of the pipe section," as recited in amended Claim 1.

Additionally, amended Claim 1 recites that the "first and second fittings [are] disposed on the inlet and outlet portions of the pipe section." Such a limitation is not taught or suggested by Kowalski. Moreover, the pipe section is defined by the Office Action as elements (22, 24, 10).

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As should be apparent from examination of FIGURE 2, the fittings 31 in Kowalski are disposed upon the inlet and outlet portions 18 and 20 of the tubing, and not disposed upon the pipe section (22, 24, 10) as recited by Claim 1. Therefore, Kowalski fails to teach that the "first and second fittings [are] disposed on the inlet and outlet portions of the pipe section," as recited in amended Claim 1.

In conclusion, Kowalski fails to teach or suggest each and every element as set forth in amended Claim 1. Accordingly, applicant respectfully requests that the pending rejection of Claim 1 under 35 U.S.C. § 102(b) be withdrawn. Claims 2-9 depend on Claim 1, therefore, for at least the reasons argued above for Claim 1, dependent Claims 2-9 are also allowable.

Claim Rejections Under 35 U.S.C. § 102(b) - Rosecrans

Claim 1, as well as certain claims stemming therefrom, stand rejected under 35 U.S.C. § 102(b) as being anticipated by Rosecrans. The Office Action states, in reference to Rosecrans, that the "center segment 12 of the pipe section may be selectively removed leaving the inlet and outlet portions including the first and second fittings (the fitting may be cut just to the right of 14 and to the left of 15, thereby removing 12 and leaving 14 and 15)." Although it may be technically possible to cut the center segment 12 as described, there is simply no motivation or teaching in Rosecrans to do so. The mere fact it may be technically feasible to modify Rosecrans in such a manner does not render the claimed embodiment anticipated unless the reference also suggests the desirability of the modification. See *In re mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Applicant's careful review of Rosecrans failed to locate any disclosure suggesting the desirability of such a modification.

Further, applicant further submits that there is no suggestion or motivation in Rosecrans to make such a modification since the modification would render the pipe section of Rosecrans unsatisfactory for receiving a close fit device between the cut ends of the pipe section. More

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specifically, if one were to cut the pipe section as described in the Office Action, the fittings 14 and 15 do not comprise any structure that would readily allow the coupling of a close fit device thereto. One would have to resort to welding or some other extreme method to couple the close fit device to the fittings 14 and 15, since the fittings are formed to couple to an object positioned on their outward ends, and not to an object disposed between their respective inward ends. Thus, there is no suggestion to modify the pipe section of Rosecrans as indicated in the Office Action to arrive at the embodiment of Claim 1.

Accordingly, applicant respectfully submits that the pending rejection of Claim 1 under 35 U.S.C. § 102(b) has been overcome and therefore, respectfully requests that the rejection be withdrawn. Claims 2-9 depend on Claim 1, therefore, for at least the reasons argued above for Claim 1, dependent Claims 2-9 are also allowable.

Claim Rejections Under 35 U.S.C. § 103(a) - Kowalski in view of Thweatt

Claim 23 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kowalski in view of Thweatt. Amended Claim 23 recites "a pipe section having a center segment integrally formed with inlet and outlet end portions of the pipe section." These elements are not taught or suggested by Kowalski or Thweatt, individually or in combination. More specifically, neither Thweatt, or as discussed above, Kowalski, teach a center segment integrally formed with inlet and outlet end portions of the pipe section. Inasmuch as these elements are not taught or suggested by Kowalski or Thweatt, individually or in combination, applicant submits that rejection of Claim 23 under 35 U.S.C. § 103(a) is in error and should be withdrawn.

Applicant respectfully submits that the dependent claims that depend from Claim 1 are thus allowable for the reasons stated above. In addition, the dependent claims have further limitations that distinguish over the cited references of record, whether taken individually or in

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hypothetical combination. Therefore, applicant respectfully submits that the dependent claims should also now be found allowable.

New Claim 24

Applicant thanks Examiner for acknowledging the allowability of Claim 2 if rewritten in independent form including all the limitations of the base claim and any intervening claims. New Claim 24 is Claim 2 rewritten in independent form including all of the limitations of the base claim and any intervening claims. Therefore, applicant submits that new Claim 24 is allowable over the prior art.

CONCLUSION

In view of the foregoing amendments and remarks above, applicant respectfully submits that the present application is in condition for allowance. Consequently, early and favorable action allowing these claims and passing this application to issue is respectfully solicited. If any questions remain that may be expeditiously resolved by telephone, Examiner is invited to contact the applicant's undersigned attorney at the number below.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE JANUARY 31, 2003

In the claims:

1. (Amended) A fitting and pipe section assembly that is capable of being installed in tubing of a jetted bath to render the tubing adaptable to accept a close fit [heater] device, comprising:

a pipe section having a center segment integrally formed with [between] inlet and outlet end portions of the pipe section for fluid flow coupling to an inlet and an outlet of the tubing;

first and second fittings disposed on the inlet and outlet portions of the pipe section;

wherein the center segment of the pipe section may be selectively removed leaving the inlet and outlet portions including the first and second fittings; and

wherein the [fitting and] pipe section [assembly] may accept the close fit device between the inlet and outlet portions of the [fitting and] pipe section [assembly].

4. (Amended) The fitting and pipe section assembly of Claim 1, wherein the close fit device may be removably secured to the fittings by [the] a fastening assembly.

6. (Amended) The fitting and pipe section assembly of Claim 4, wherein the close fit device has an inlet and an outlet with flanges positioned at the inlet and outlet; wherein the fastening assembly comprises an outer seal which may be positioned between the fitting and the flange, a split nut which may be [placed over the flange and the fastening structure and] tightened upon the fitting by rotating the split nut, and a nut cover which may be slid over the tightened split nut.

23. (Amended) A fitting and pipe section assembly and interchangeable heater device for mounting in fluid flow communication in tubing of a jetted bath, comprising:

[a fitting and pipe section assembly including] a pipe section having a center segment integrally formed with [between] inlet and outlet end portions of the pipe section, each of the end portions carrying a first close fit fitting, the inlet and outlet end portions being adapted to be

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coupled in fluid flow communication to an inlet and outlet of the tubing to install the pipe section [assembly] in the tubing; and

a heater device having a tubular body defining an inlet end and an outlet end, each of the inlet and outlet ends carrying a second close fit fitting, wherein the center segment [installed assembly] can be selectively laterally removed from between the inlet and outlet end portions and the heater [fluid flow] device can then be laterally inserted in place of the center segment between the inlet and outlet end portions of the pipe section [installed assembly], wherein [with] the second close fit fittings of the heater device engaging the first close fit fittings of the pipe section [assembly] without displacement of the installed inlet and outlet end portions of tubing.

Claim 24 has been added.

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